

Health Care Fraud, Waste and Abuse (The Deficit Reduction Act)

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HEALTH CARE FRAUD, WASTE, AND ABUSE

Diversicare takes health care fraud and abuse very seriously. It is our policy to provide information to all employees about: federal and state false claim acts; whistleblower protections available under such laws to employees who take lawful action in initiating or assisting in a false claims action; and Diversicare’s policies and procedures for detecting and preventing fraud, waste and abuse.

A. Federal False Claims Act

For several years, the federal government has used a law known as the Federal Civil False Claims Act (“FCA”) to pursue legal remedies against persons and entities that submit fraudulent claims for payment. An example of a false claim would be billing for a procedure or service that was not performed.

The FCA allows for lawsuits alleging violations to be filed by the government, or private persons on behalf of the government. Such a suit by a person is known as a “qui tam” action, and the person is eligible to receive a portion of any recovery against the health care provider. The FCA imposes monetary penalties from \$5,500 to \$11,000 per false claim, and a triple damages penalty for damages incurred by the government.

If a healthcare provider is found to have submitted false claims to the government, it faces other sanctions in addition to the FCA’s monetary penalty provisions, such as being excluded from participating in any federally-funded healthcare program (such as Medicare and Medicaid).

B. State False Claims Acts

In addition to the FCA, several states have passed their own state false claims laws. Like the FCA, these state false claims laws impose significant monetary penalties based on double or triple damages multiplier (i.e., a penalty to two or three times the amount of the false claims) and a *per claim* monetary penalty (e.g., a \$5,000 - \$10,000 penalty for each false claim filed for payment). Also, these state false claims laws allow private citizens to file whistleblower suits on behalf of the government, and receive a percentage of the money recovered as a result of the suit. Finally, these state false claims laws have provisions which protect whistleblowers from any retaliatory action (by their employer) stemming from that person’s decision to file a false claims lawsuit. Currently, Diversicare operates in three states which have their own state false claims law: Florida, Tennessee, and Texas. The Office of the Inspector General, U.S. Department of Health and Human Services, recently determined that the Tennessee and Texas state false claims laws meet the Deficit Reduction Act’s “financial incentive” requirements, which will allow these states to keep a larger portion of any federal monies recovered from healthcare providers prosecuted under these laws. Stated differently, states that have a DRA-compliant

false claims law will get to keep more of the federal healthcare funds recovered during the course of state investigations and prosecutions based on violations of the state false claims law. With such a strong financial incentive in place, it is expected that several other states will pass false claims laws to combat what they perceive to be fraud and abuse in the healthcare industry.

Several other states have laws which resemble the FCA and other state false claims laws. The difference is that these laws do not have a whistleblower provision allowing private persons to file suit on behalf of, or share in any money recovered by the government. Nevertheless, these laws typically carry a significant monetary penalty and multiple damages provisions (e.g., a penalty of \$5,000 for each and every false claim plus triple damages), which provide an incentive for state prosecutors and enforcement agencies to pursue legal remedies using these laws. Presently, Diversicare operates in four states which have these “enhanced” monetary penalty laws: Arkansas, Kentucky, Ohio and West Virginia. Though these laws do not presently allow private citizens to file whistleblower lawsuits, the DRA’s strong financial incentives (i.e., states can keep more of the federal healthcare funds that they recover if their false claims law is DRA-compliant) will likely result in several of these laws being amended to include a whistleblower provision.

Presently, Alabama is the only state in which Diversicare operates that does not have a state false claim or enhanced monetary penalty law. That said, Alabama does have a criminal Medicaid fraud law, which prohibits making a false statement in a claim or application for Medicaid payments or benefits. Also, this law prohibits any person from soliciting or receiving any kickback or bribe in return for referring patients to another person for the furnishing of medical items or services paid, in whole or in part, by Alabama’s Medicaid program. A conviction under this law is a felony which carries a penalty of \$10,000 or five years imprisonment, or both.

C. Whistleblower Protection

In addition to the provisions allowing whistleblowers to share in any money recovered by the government, the FCA, as well as the state false claims laws, protects whistleblowers from any retaliation resulting from their decision to file a whistleblower lawsuit on the government’s behalf. These “whistleblower protection” provisions provide that an employee who is fired or otherwise discriminated against by an employer because of lawful acts done by that employee in the filing or furtherance of a false claims lawsuit “shall be entitled to all relief necessary to make the employee whole.” Such relief can include, but is not limited to, two times the amount of back pay, reinstatement to the job held, and interest on back pay.

D. Diversicare’s Policies and Procedures for Detecting and Preventing Fraud and Abuse

Diversicare is actively committed to conducting its business operations in an ethical manner. Part of this commitment is the operation of the corporate compliance program, which provides a medium for employees to report all suspected incidents of fraud, waste and abuse, and provides the company an opportunity to investigate and resolve such allegations. If you suspect that a person is engaging in conduct that may result in a fraud against a government program, please contact the Corporate Compliance Officer via telephone at (615)771-7575, by mail at 1621 Galleria Blvd., Brentwood, Tennessee 37027, or call the Compliance Hotline at 1-888-508-9774.